



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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No. 88/10

TO COUNTY ASSESSORS:

QUESTIONS AND ANSWERS - PROPOSITIONS 58 AND 60

In response to requests from our Board Members and various legislators, our staff has drafted a series of questions and answers relative to Propositions 58 and 60, approved by the electorate on November 4, 1986, based on the inquiries most received from the public. We are forwarding these questions and answers to you in the hope that they may aid you and your staff in fielding taxpayer questions involving these two highly visible constitutional amendments.

If you need any further information in this matter, please contact our Property Taxes Department, Real Property Technical Services Unit, at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosures

PROPOSITION 58

Questions and Answers

1. Question

What is Proposition 58?

Answer

Proposition 58 is a constitutional amendment approved by the voters of California on November 4, 1986 which excludes from reassessment transfers of certain real property between family members.

2. Question

Which transfers of real property are excluded from reassessment by Proposition 58?

Answer

The following transfers of real property are affected by Proposition 58:

- a. Transfers of real property between spouses.
- b. Transfers of the principal residences between parents and children.
- c. Transfers of the first \$1,000,000 of real property other than the principal residences between parents and children.

3. Question

On what date does Proposition 58 affect transfers between family members?

Answer

Any transfers between parents and children occurring on or after November 6, 1986 may come under the provisions of Proposition 58. The interspousal provisions of Proposition 58 reaffirms the existing statutory laws which were effective for transfers on March 1, 1975.

4. Question

Does Proposition 58 change the existing laws regarding interspousal transfers of real property?

Answer

No. Proposition 58 reaffirms the existing statutory law relating to the exclusion of interspousal transfers. For this reason, the implementing statute (AB 47) for Proposition 58 deals only with the transfers between parents and children.

5. Question

What is considered the principal residence?

Answer

The principal residence is a dwelling for which a homeowner's exemption, or a disabled veteran's residence exemption has been granted in the name of the parent or child. Only a reasonable portion of the land will be considered part of the principal residence if the land exceeds the area reasonably necessary as a site for the residence.

6. Question

Who are considered children under Proposition 58?

Answer

- a. Any child born of the parent(s).
- b. Any stepchild or spouse of that stepchild while the relationship of stepparent and stepchild exists.
- c. Any son-in-law or daughter-in-law of the parent(s).
- d. Any statutorily adopted child, who was adopted before the age of 18.

7. Question

What value of the transferred property is considered towards the \$1,000,000 exclusion limit?

Answer

It is the Proposition 13 value (factored base-year value) just prior to the date of transfer. Basically this is the taxable value on the assessment roll.

8. Question

Can this exclusion be combined by eligible family members?

Answer

Yes. For example, a father and mother may combine their exclusion to a limit of \$2,000,000, transfer real property with a taxable value of \$2,000,000 to their children, and that real property will be excluded from reassessment.

9. Question

Can transfers of real property to or from a legal entity be eligible for the Proposition 58 exclusion?

Answer

No. Transfers of real property must be between eligible parents and children, not legal entities. Transfers of ownership interests in legal entities are excluded from the Proposition 58 benefit, also.

10. Question

How many principal residences can be transferred between parents and children and still qualify for this exclusion?

Answer

There is no limit to the number of transfers of principal residences. However, each principal residence must qualify as such.

11. Question

Does the transfer of real property outside of California enter into the \$1,000,000 exclusion limit?

Answer

No. Only transfers of real property located in California qualify for this exclusion.

12. Question

Must the principal residence of the transferor become the principal residence of the transferee after the transfer?

Answer

No. The residence need only be the principal residence of the transferor.

13. Question

Can a transfer of real property between grandparent and grandchild qualify for this exclusion?

Answer

No. The transfer must be between parents and children.

14. Question

If I think that my transfer of real property qualifies for this exclusion, how may I apply?

Answer

As a possible eligible transferee, you must file a claim with the assessor who will then determine if the transaction qualifies. Claim forms are available at the assessor's office.

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PROPOSITION 60 - QUESTIONS AND ANSWERS

1. Question

What is Proposition 60?

Answer

Proposition 60 is a constitutional amendment approved by the voters of California on November 4, 1986 which allows the transfer of base year values from a former residence to a replacement residence, under certain conditions, for qualified persons over the age of 55.

2. Question

Please describe the "certain conditions" mentioned in Answer No. 1 above.

Answer

The following conditions must be met for tax relief to be granted under Proposition 60:

- a. Both properties must be located in the same county.
- b. As of the date of transfer of the original property, the transferor (seller) or a spouse residing with the transferor must be at least 55 years of age.
- c. The original property must have been eligible for the Homeowners' Exemption, or entitled to the Disabled Veterans' Exemption.
- d. The replacement dwelling must be of equal or lesser value (as further explained in question 6) than the original property.
- e. The replacement dwelling must have been acquired or newly constructed on or after November 6, 1986.
- f. The replacement dwelling must be purchased or newly constructed within two years of (before or after) the sale of the original property.
- g. The original property must be subject to reappraisal at its current fair market value in accordance with Sections 110.1 or 5803 of the Revenue and Taxation Code as the result of its transfer.
- h. A claim for relief must be filed within three years of the date a replacement dwelling is purchased or new construction of that replacement dwelling is completed.

3. Question

Is it true that only one claimant, out of several co-owners of a replacement dwelling need be at least age 55 as of the date of sale of an original property in order to qualify?

Answer

Yes, only one claimant/occupant (or his/her spouse who was also an occupant) who was a qualified record owner of the original property must be at least 55 years of age.

4. Question

Can a taxpayer apply for and receive the benefit of Proposition 60 numerous times during the course of his/her lifetime?

Answer

No. Only claimants who have not previously been granted this property benefit are eligible.

5. Question

What is meant by "equal or lesser value" of a replacement dwelling?

Answer

In general, "equal or lesser value" of a replacement dwelling means: 100 percent of market value of original property if a replacement dwelling is purchased before an original property is sold; 105 percent of the market value of an original property if a replacement dwelling is purchased within one year after the sale of an original property; 110 percent of the market value of an original property if a replacement dwelling is purchased within the second year after the sale of an original property.

6. Question

When making the "equal or lesser value" test comparison, is a simple comparison of the sales price of the original property and the purchase price/cost of new construction of the replacement dwelling all that is needed?

Answer

No. The comparison must be made using: the full market value of the original property as compared to the full market value of the replacement dwelling as of its date of purchase/completion of new construction. This is important because sales/purchase price is not always the same as market value. The assessor must determine the market value for each property, which may differ from sales price.

7. Question

Is it true that a replacement dwelling may be acquired any time within two years (before or after) of the date of sale of original property?

Answer

Yes, provided that the replacement dwelling is acquired on or after November 6, 1986 and not before. An exception occurs when a replacement dwelling lot is acquired before November 6, 1986. If this occurs then as long as the lot was purchased within two years of the sale of original property and the replacement dwelling structure was newly constructed 'after' November 6, 1986, then only the structure portion of the replacement dwelling would be eligible for the benefit. If the purchase of the lot occurred more than two years before the sale of the original property, however, then no benefit may be granted to any portion of the replacement dwelling property.

8. Question

If the current full cash value of my replacement dwelling slightly exceeds the of "equal or lesser value" test as compared to the full market value of my original property, can't I still receive partial benefit?

Answer

No. Unless the replacement dwelling satisfies the "equal or lesser value" test, no benefit is available.

9. Question

May I give my original property to my son/daughter and still receive the Proposition 60 benefit when I purchase a replacement property?

Answer

No. The law provides that an original property must be sold for consideration and subject to reappraisal at full market value at the time of sale. Original property transferred to a child or disposed of by gift or devise does not qualify.

10. Question

Isn't the assessor precluded under Proposition 60 from issuing supplemental assessments when the factored base-year value is transferred from an original property to a replacement dwelling?

Answer

No. When the replacement dwelling is purchased or newly constructed, the assessor is mandated by law, pursuant to Revenue and Taxation Code Section 75, et seq., to issue supplemental assessments (positive or negative) for all transactions that result in a base-year value change, including those that qualify under Proposition 60. This is accomplished by comparing the factored base-year value of the original property to the factored base-year value of the replacement dwelling property.

11. Question

Can I qualify for the benefits of Proposition 60 when I sell my original property (owned by me alone) and purchase a replacement dwelling with several co-owners? Even if I own only a 10 percent interest in the replacement dwelling?

Answer

Yes, the base year value of your original property can be transferred to your replacement dwelling. As long as you are otherwise qualified you may receive the benefits of Proposition 60 regardless of how many co-owners of record there are on the replacement dwelling. However, you, along with all the other co-owners, will never be able to qualify again since all of you will have received the one-time benefit provided under this proposition. In this situation the total market value of original property is compared to the total market value of the replacement dwelling property regardless of the fact that the qualified principal claimant may only own 10 percent of both original and replacement dwelling properties.

12. Question

May I, as a former co-owner of an original property, receive partial benefit on my replacement dwelling along with the other co-owners on their separate replacement dwellings too?

Answer

No. The law provides that only one co-owner of an original property which is/was qualified for the Homeowners' Exemption may receive the benefit in a situation like this where all co-owners purchase separate replacement dwellings. The co-owners must determine, between themselves, which one should receive the benefit. Only in the case of a multiple-residential original property where several co-owners qualify for separate Homeowners' Exemptions may portions of the factored base-year value of that property be transferred to several qualified replacement dwellings.

13. Question

Can two otherwise qualified taxpayers who have recently sold their separately owned original properties combine their claim for Proposition 60 benefit when they buy a single replacement dwelling together?

Answer

No. They can only receive benefit if one or the other, not both, qualifies by comparing his/her original property to the jointly purchased replacement dwelling. The implementing legislation specifically disallows combining a claim in this manner regardless of whether the replacement dwelling co-owners are married or not.

14. Question

How does one qualify for the Proposition 60 benefit when he/she sells an original property, then purchases a replacement dwelling within two years, and at the time of purchase of the latter property he/she no longer qualifies for a Homeowners' Exemption on the original property sold nearly two years prior?

Answer

This presents no qualification problem for Section 69.5 treatment since the statute requires that at the time of sale of the original property the claimant is an owner and a resident of that property and the property is eligible for the Homeowners' Exemption as the result of the claimant's ownership and occupation of the property as his or her principal residence (Section 69.5(b)(1)(2)).

15. Question

May I qualify for the benefits as long as I either sell my original property after November 6, 1986 or purchase my replacement dwelling after November 6, 1986?

Answer

No. Replacement dwelling property (or a portion thereof) purchased prior to November 6, 1986 cannot receive the benefits. However, the date of sale of the original property may occur either prior to or after November 6, 1986 if it is within two years of the purchase of the replacement dwelling property.

16. Question

Currently, a taxpayer must sell the original property and purchase a replacement dwelling within the same county in order to qualify for the benefits of Proposition 60. Isn't it likely that the Legislature will amend that requirement in the future and allow taxpayers to purchase replacement dwelling properties anywhere within the State and not restrict it to the same county?

Answer

No. Proposition 60 created the "within the same county" requirement in a deliberate effort to prevent the transfer of low-tax bases to retirement-oriented counties since this would erode the tax base of those counties. The Legislature cannot modify this requirement unless the California Constitution is amended to permit it.

17. Question

If I think that my transfer of real property qualifies for this benefit, how may I apply?

Answer

You must file a claim with the assessor who will then determine if the transaction qualifies. Claim forms are available at the assessor's office.

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